| UNITED STATES DISTRICT COURT |
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| SOUTHERN DISTRICT OF NEW YORK |

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DANIEL EISNER, :

Plaintiff, :

07-CIV-7837 (AKH)

-against-

ECF CASE

WALLEYE TRADING ADVISORS, LLC, DECLARATION OF

HARRY W. LIPMAN

Defendant.

:

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HARRY W. LIPMAN, being an attorney duly admitted to practice law in this Court, declares under the penalty of perjury that the following statements are true and correct:

- 1. I am a member of Rottenberg Lipman Rich, P.C., attorneys for defendant, Walleye Trading Advisors, LLC. ("Walleye Trading"), and submit this declaration in opposition to Plaintiff's motion for a preliminary injunction.
 - 2. There has been no discovery in this action to date.
- 3. Walleye Trading served and electronically filed its answer on October 16, 2007.
- 4. At the same time, Walleye Trading's served its First Request for Production, dated October 16, 2007 (the "First Request for Production"), a copy of which is annexed as Exhibit F, and a notice of deposition of plaintiff, also dated October 16, 2007, a copy of which is annexed as Exhibit G.

- 5. Plaintiff has not yet produced any documents in response to the First Request for Production.
- 6. Walleye Trading intends to subpoena D. E. Shaw & Co., L.P. ("D. E. Shaw") for documents and perhaps testimony, and also intends to subpoena Peter Reiss and Tomislav Pavlicic, two employees of D. E. Shaw who submitted affidavits in support of plaintiff's instant motion for preliminary injunctive relief.

By: Harry W. Lipman

Dated: October 23, 2007

2